BLOSSOM HORIZON SDN BHD *a*

v.

PERBADANAN KEMAJUAN PERTANIAN SELANGOR

HIGH COURT MALAYA, KUALA LUMPUR *b*
ABDUL WAHAB PATAIL J
[ORIGINATING SUMMONS NO: 21-244-2002]
10 MAY 2003

LAND LAW: *Caveat - Private caveat - Entry in respect of whole of alienated land to protect interest only in part thereof - Entry after coming into force of Act A587 but before that of National Land Code (Amendment) Bill 2000 - Whether legally unsustainable - National Land Code, ss. 322(1), (2) & (3), 323(2), 324, 326, 328* *c*

On 13 August 2001, the plaintiff, who claimed to have a registrable interest in a portion of the defendant's land pursuant to a sale and purchase agreement, lodged a private caveat against the whole of the said land. In this application for an extension of the caveat, which the defendant opposed, a question arose as to whether the caveat, as entered, was legally sustainable, bearing in mind the effect and purport of the amendments effected, firstly upon s. 322(1) of the National Land Code ('NLC') *vide* Act A587, which came into force on 25 March 1985, and secondly upon ss. 322 and 323 of the NLC *vide* National Land Code (Amendment) Bill 2000, which came into force on 1 December 2001. *d* *e*

Held: *f*

[1] There are three phases affecting the law with regard to private caveats affecting part of the land, namely: **(a)** Before Act A587 became effective on 25 March 1985, where the position was "that you either caveat the whole or not at all, and that if you claim a registrable interest in a portion, you may caveat the whole land, provided that you expressly limit the effect of your caveat to protect only your claim" (see *N. Vengadaselam v Mahadevan & Anor* [1976] 2 MLJ 16 FC); **(b)** Upon effectiveness of Act A587 whereof, with the addition of the proviso "that such a caveat shall not be capable of being entered in respect of a part of the land" the obtaining position became, as of 25 March 1985, "that no caveat could be entered by the registrar against any land where the caveator was interested in a specific portion of it even though the effect *g* *h*

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was expressly intended to be limited only to that specific portion" (see *Tan Heng Poh v. Tan Boon Thong & Ors*; followed by *Chor Phaik Har v. Farlim Properties Sdn Bhd* [1994] 4 CLJ 285; followed by *Jasalam (M) Sdn v. Wong Koon Yee* [2000] 2 CLJ 377); and **(c)** Upon effectiveness of the National Land Code (Amendment) Bill 2000 on 1 December 2001, amending ss. 322 and 323 of NLC and allowing caveats upon an undivided share of alienated land. (p 522 c-g)

[2a] The caveat in this case was filed on 13 August 2001. That being the case the legal position as stated in *Tan Heng Poh, Chor Phaik Har* and *Jasalam (M) Sdn Bhd* must necessarily apply. (p 522 h)

[Application dismissed.]

Case(s) referred to:
Chor Phaik Har v. Farlim Properties Sdn Bhd [1994] 4 CLJ 285 FC ***(foll)***
Jasalam (M) Sdn Bhd v. Wong Koon Yee [2000] 2 CLJ 377 HC ***(foll)***
Luggage Distributors (M) Sdn Bhd v. Tan Hor Teng & Anor [1995] 2 CLJ 713 CA ***(refd)***
Murugappa Chettiar Lakshamanan v. Lee Teck Mook [1995] 1 CLJ 545 CA ***(refd)***
N Vengadaselam v. Mahadevan & Anor [1976] 2 MLJ 161 ***(refd)***
Tan Heng Poh v. Tan Boon Thong & Ors [1992] 3 CLJ 1340; [1992] 1 CLJ (Rep) 316 SC ***(foll)***

Legislation referred to:
National Land Code, ss. 211, 322, 323(1), (2), 324, 326

For the plaintiff/applicant - JD Goonting; M/s ML Lum & Co
For the defendant/respondent - S Achan; M/s Baharuddin Ali & Co

Reported by WA Sharif

JUDGMENT

Abdul Wahab Patail J:
The defendant is the registered proprietor of land measuring approximately 2,584 acres, more particularly described as P.T. No. 3219 H.S. (D) No. 1187 in Mukim Dengkil, Sepang.

It is also not disputed that the plaintiff, Blossom Horizon Sdn. Bhd. is the purchaser under a sale and purchase agreement dated 27 July 2001 of part of the said land measuring approximately 570 acres.

On 13 August 2001 the plaintiff applied in Form 19B pursuant to s. 323 of the National Land Code 1965 to enter a private caveat upon the whole of P.T. No. 3219 H.S. (D) No. 1187 in Mukim Dengkil, Sepang. That it is upon the whole of the land is stated in column 4 of the Jadual to Form 19B. Form 19B was made by the plaintiff company under its official seal and signed by a director and a director/secretary of the company.

The private caveat was entered upon the register pursuant to the above application as Perserahan No. 29986/2001.

On 19 September 2002 the Land Administrator issued a notice pursuant to s. 326 of the National Land Code 1965 to the plaintiff as caveator, thus necessitating this application by the plaintiff. The defendant who remains the registered proprietor opposes the plaintiff's application.

The plaintiff, Blossom Horizon Sdn. Bhd. is seeking by this application, orders as follows:

(a) That private caveat No. 29986/2001 be extended under s. 328 or until the resolution of the following proceedings:

i) Shah Alam High Court Civil Suit No. 21-60-2000 between *Upright Dignity Sdn. Bhd. v. Perbadanan Kemajuan Pertanian Selangor, SAP Holdings Bhd. and Desa Hilir Sdn. Bhd.*

ii) Court of Appeal Civil Appeal B-02-538-2001 of Shah Alam High Court Civil Suit No. 24-988-2000 between *Perbadanan Kemajuan Pertanian Selangor v. Upright Dignity Sdn. Bhd.*

(b) An order that the Registrar of Titles gives effect to the above orders.

(c) Cost to be payable by the defendant.

(d) Such other orders as the court thinks fit.

In relation to whether a caveat may remain on the register, it is trite law that the court must determine whether on the material provided in the caveator's application under s. 323(1) of the National Land Code, there is disclosed a caveatable interest. If the caveator succeeds in doing so, the next question is whether upon the evidence produced in support of his claim to a caveatable

interest there is disclosed a serious question to be tried. Assuming there is, the final question is whether the balance of justice lies in favour of the caveat remaining on the register pending the disposal of the suit. *Murugappa Chettiar Lakshamanan v. Lee Teck Mook* [1995] 1 CLJ 545; *Luggage Distributors (M) Sdn. Bhd. v. Tan Hor Teng & Anor* [1995] 2 CLJ 713.

The grounds stated in Form 19B by the plaintiff are as follows:

> i) Syarikat kami telah melalui perjanjian jual beli bertarikh 27/7/2001 membeli 570 ekar tanah yang terletak di dalam H.S.(D) No. 1187, P.T. No. 3219, Mukim & Daerah Dengkil-Sepang sepertimana yang dinyatakan didalam perjanjian tersebut; dan
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> ii) Syarikat kami perlu memasukkan kaveat persendirian keatas tanah tersebut untuk melindungi hak dan kepentingan kami sementara menunggu perlaksanaan, penyempurnaan dan penamatan perjanjian tersebut.

Mr. S. Achan, on behalf of the defendant, raised a point of law as to compliance with ss. 323 and 324 of the National Land Code. More specifically, and referring to the Jadual to Form 19B as filed, the objection is that the caveat was lodged in respect of the whole of the land whilst the plaintiff company's interest is only in respect of part of it, even though the plaintiff company has stated in para. 2 of Form 19B and in the statutory declaration by one Lum May Lan did describe the plaintiff's interest in respect of 570 acres only.

Mr. J.D. Goonting, on behalf of the plaintiff, submitted that there is no breach of s. 324 as the interest of the caveat is to bind the land, and since the amendment to s. 323(2) to add the words "or undivided share" came into force only on 1 December 2001, the only requirement is for the application to conform to Form 19B and in accordance with s. 211. He submitted that Form 19B must be followed strictly. Paragraph 1 gives only 2 alternatives: "tanah itu sendiri/kepentingan yang diperihalkan dalam Jadual tersebut." He further submitted the plaintiff has made clear in para. 2(a) his interest is in respect of 570 acres of the land.

Since the caveat in this case was entered on 13 August 2001 and the amendment to s. 323(2) to add the words "or undivided share" came into force only on 1 December 2001, the correct approach for the purposes of this case is to read and interpret s. 323(2) without those words. The sub-section would then be as follows:

(2) Any such person or body wishing to apply for the entry of such a caveat shall do so in Form 19B and such application shall be attested in accordance with the provisions of section 211 and shall state therein the nature of the claim on which his application is based, and whether the caveat is to be expressed to bind the land itself or a particular interest only.

On its own the phrase "to bind the land itself or a particular interest only" in s. 323(2) might lend itself to the interpretation advanced by Mr. J.D. Goonting. However, para. 1 of Form 19B shows the words to be used as follows:

the land itself/the particular interest described in the said schedule.

Now the schedule is specified as the form shown in Form 13A. Column 4, being the material part for the purposes of this case, requires:

Share of land (if any)

The words in brackets "if any" mean the column needs to be filled in only if a share is involved, and not when the whole land is intended to be caveated. Although in the circumstances there is no harm to state "semua" or "the whole" in column 4 when the intent is to bind the whole of the land, it would seem to me to be rather unnecessary if it is already stated in para. 1 of Form 19B "the land itself", meaning therefore the whole of the land.

The necessity to differentiate between a caveat that affects the land itself and one affecting a particular interest arises from the different consequences flowing from each one as a result of s. 322 sub-ss. (2) and (3). The question in this case is that if the plaintiff's "interest" is not under sub-s. (3) but instead is 570/2584 = 22.06% of the land, could he caveat the whole of the land?

In *Tan Heng Poh v. Tan Boon Thong & Ors.* [1992] 3 CLJ 1340; [1992] 1 CLJ (Rep) 316, the defect complained of was apparent in the Form 19B itself where the appellant/caveator had expressly intended the caveat to have the effect of binding the whole 8 parcels of land instead of binding only the beneficial interest in the said lands limited to his 1/6 share. The Supreme Court held:

Section 323(2) expressly requires firstly that Form I9B should be used, and secondly that the caveator must specify therein not only the nature of the claim on which his application is based, but also to state expressly whether the caveat is to bind the land or a particular interest only. In our view, non-compliance with these requirements may be fatal and may be a valid ground for removing a caveat at the instance of the applicant.

At p. 82 of the appeal record, the Form 19B read with the statutory declaration showed that whilst the appellant did sufficiently particularise the nature of his claim on which his application was based, he ought to have expressly specified that the caveat was intended to bind only his limited interest in the 8 parcels of land and not the whole land. In our view the caveat contained serious defect in failing to comply with the requirement of s. 323(2). There is a clear distinction in the effect of a caveat expressed to bind the land itself under s. 322(2) and one to bind a particular interest only under s. 322(3). The question may therefore be asked that if you have only a limited caveatable claim or interest in the land, how can you caveat the whole land?

The Supreme Court went on to consider the effect of such defect and held:

The main ratio of the judgment of this Court in *Mosbert Bhd. v. Stella D'Cruz* [1985] 2 MLJ 446 is to the effect that once a caveat is shown to be defective, it is no duty of the Court to save it by amendment. In relation to the power of the Court to order remedial affidavit to be filed for the purpose of s. 417 NLC, Seah SCJ, had this to say at p. 448:

> It is plain that the caveat was intended to forbid the registration of any dealing affecting the whole land and was not confined to private Lot No. 460 only. In our opinion, sub-section (2) does not empower the High Court to make such an order. The section is of limited application only and is intended to authorise the High Court to direct the Land Registrar to do all such things as may be necessary to give effect to any judgment or order made by the Court affecting the land. It does not, in our judgment, give power to the Court to allow a defective or void private caveat to be amended by the caveator. For the purpose of deciding whether a private caveat is defective or void the High Court should confine itself to the caveat and other relevant supporting documents. The procedure to be adopted should be a simple and summary one. This matter appears to have been dealt with in detail by the Privy Council in the case of *Eng Mee Yong & Ors. v. Letchumanan* [1979] 1 LNS 18 and at p. 21 Lord Diplock said:
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> > Unless there were some speedy procedure open to the registered proprietor to get the caveat set aside in cases where the caveator's claim is baseless or frivolous or vexatious, the Torrens system of land registration and conveyancing, so far from giving certainty to title to land in Malaya, would leave the registered proprietor in a more precarious position as respects his powers of disposition of his land than an unregistered proprietor under English law.

> Since the entry of a caveat was a blot on the title, we agreed with the view that once the caveat was found to be legally unsustainable, that should be the end of the matter, and the caveatee was entitled to have the caveat removed where the caveator's claim was baseless, frivolous or vexatious.

More to the point relevant to this case, the Supreme Court held:

> The other question that arose was that even if there had been no trust for conversion, could a person who was only interested in a specific portion of land enter a caveat against the land, having regard to the new proviso to s. 322(1) NLC. With effect from 25 March 1985, a proviso has been added by Act A587 which provides:
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> > Provided that such a caveat shall not be capable of being entered in respect of a part of the land.
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> In concluding his judgment in *Mosbert*'s case, Seah SCJ, in referring to the new amendment observed at p. 449 that the judgment of the Court dealing with the private caveat "would now seem to be of academic interest only". We took this to mean that as from 25 March 1985, no caveat could be entered by the Registrar against any land where the caveator was interested in a specific portion of it even though the effect was expressly intended to be limited only to that specific portion. In our view the new proviso in s. 322(1) had indeed affected the judgment of the Federal Court in *N. Vengadaselam v. Mahadevan & Anor.* [1976] 2 MLJ 161. With the greatest of respect, the learned Lord President had correctly stated the law as it stood, at p. 163:
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> > ... you either caveat the whole land or not at all, and that if you claim a registrable interest in a portion, you may caveat the whole land, provided that you expressly limit the effect of your caveat to protect only your claim.
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> The amendment has changed the law by expressly prohibiting the entry of a caveat in respect of a part of alienated land. The nature and effect of private caveat under s. 322 is now subject to an omnibus proviso that, "such a caveat shall not be capable of being entered in respect of a part of the land". Thus, notwithstanding the fact that a person can bring himself under one of the categories of person under s. 323(1) at whose instance a private caveat may be entered, the Registrar is now prevented from entering a caveat whether expressly intended to bind the land or merely a particular interest therein, if the caveator's claim or interest under s. 323(1) relates to only part of the land. In our opinion, this is the only reasonable interpretation of the new proviso. Any other interpretation would appear to make it meaningless, and inconsistent with the Torrens System of giving certainty and indefeasibility to registration of land title, save for fraud or misrepresentation in the transfer or registration itself. The legal position prior to Vengadasalam would now

> appear to be authoritative, which means that a person who is interested only in a specific portion of land cannot enter a caveat against the land (see *Tee Chin Yong v. Ernest Jeff* [1963] 1 LNS 143; *Woo Yok Wan v. Loo Pek Chee* [1974] 1 LNS 192 and *Pok Kew Chai v. Yeoh Thian Seng and Ors.* [1974] 1 LNS 114). For purpose of entry and registration, a private caveat should bind the whole alienated land or the whole registrable interest in the said land. If a person claimed only a limited title or interest in the alienated land, then his caveatable claim would be caught by the new proviso to s. 322(1). Thus, the present application for caveat under s. 323(1)(b) could only have been entered and continued if the caveator's claim to be beneficially entitled under the trust affecting the title or registrable interest, had related to the whole land but not otherwise.

It is clear there are 3 phases affecting the law with regard to private caveats affecting part of the land:

a) Before Act A587 became effective on 25 March 1985, where the statement of the Federal Court in *N. Vengadaselam v. Mahadevan & Anor.* [1976] 2 MLJ 161 is applicable:

> ... you either caveat the whole land or not at all, and that if you claim a registrable interest in a portion, you may caveat the whole land, provided that you expressly limit the effect of your caveat to protect only your claim.

b) Upon effectiveness of Act A587 adding the following proviso:

> Provided that such a caveat shall not be capable of being entered in respect of a part of the land.

c) Upon effectiveness of the National Land Code (Amendment) Bill 2000 on 1 December 2001, amending s. 322 and 323 to allow caveats upon an undivided share upon alienated land.

Tan Heng Poh v. Tan Boon Thong & Ors, (supra) was applied by the Federal Court in *Chor Phaik Har v. Farlim Properties Sdn Bhd* [1994] 4 CLJ 285 and followed by the Court of Appeal in *Jasalam (M) Sdn Bhd v. Wong Koon Yee* [2000] 2 CLJ 377. These authorities relate to the period at (b) above, ie, before 1 December 2001.

The caveat in this case was filed on 13 August 2001. That being the case the legal position as stated in these authorities applies.

For the above reasons I dismissed the application with costs.